TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200246037

AUG 23 2002

Uniform Issue List: 403.00-00

T:EP:RA:T3

Attention:

Legend:

Employer A =

Custodian B =

Plan X =

Dear

This is in response to your request for a ruling dated April 17, 2001, submitted by your authorized representative, with respect to an arrangement under section 403(b) of the Internal Revenue Code. Letters dated January 4, 2002, April 19, 2002, June 6, 2002, June 17, 2002, and July 10, 2002, supplemented the request.

Employer A is an organization described in section 501(c)(3) of the Code which is exempt from tax under section 501(a). Employer A has adopted Plan X, effective April 1, 2001. The custodian of Plan X is Custodian B. It is represented that Custodian B is qualified to serve as custodian under sections 403(b)(7) and 401(f)(2) of the Code.

Only eligible employees may participate in Plan X. Eligible employee is defined in section 1.15 of Plan X as any individual in the service of Employer A if the relationship between him and Employer A is the legal relationship of employer and common-law employee. However, under section 1.14 of Plan X, an eligible employee shall not include an employee (a) who is a student performing services described in section 3121(b)(10) of the Code, (b) who normally works less than 20 hours per week, (c) who is covered by a collective bargaining agreement if retirement benefits were the subject of good faith bargaining, (d) who is a nonresident alien and who receives no earned income within the

meaning of section 911(d)(2) of the Code from Employer A constituting income from sources within the United States (within the meaning of section 861(a)(3) of the Code), or (e) who is a leased employee.

Participants may contribute, under the salary reduction agreement, a percentage of their regular salary to Plan X in increments of 1 percent up to a maximum of 15 percent of such regular salary, subject to the limits on elective deferrals. All such salary reduction agreements shall be legally binding and irrevocable with respect to amounts earned while the agreement is in effect. A participant may modify the amount of his elective deferrals on a prospective basis as soon as administratively feasible and may terminate his election to make elective deferrals on a prospective basis as soon as administratively feasible. Such contributions are made on a tax-deferred basis, and such contributions shall reduce the regular salary otherwise payable to the participant.

An eligible employee may contribute to Plan X a rollover contribution, which is a prior distribution from a plan described in sections 401(a), 403(a), or 403(b) of the Code, excluding after-tax employee contributions, and an eligible governmental plan under section 457(b) of the Code which is maintained by a state, or any agency or instrumentality of a state or political subdivision of a state. Section 14.2 of Plan X provides that a distributee receiving an eligible rollover distribution under Plan X may elect to have the distribution rolled over in a direct rollover to an eligible retirement plan.

The maximum amount of elective deferrals under Plan X , combined with elective deferrals under any cash or deferred arrangements under sections 401(k), 408(k), or 403(b) of the Code, are limited under section 3.1(c) of Plan X to the maximum dollar limit of section 402(g) of the Code ($11,000 as increased by the cost of living adjustment for the year). For years ending prior to January 1, 2002, pursuant to section 3.1(d) of Plan X, this limitation may be increased by a qualified participant (if a participant has more than 15 years of service with Employer A). Section 3.3 of Plan X limits overall annual additions to those of section 415 of the Code.

Under Plan X, all contributions to Plan X made pursuant to a salary reduction agreement will be nonforfeitable (section 4.1). Pursuant to section 10.5 of Plan X, the participant may not anticipate, encumber, alienate or assign any of his rights, claims, or interests in Plan X or any part thereof. Under section 17.3 of Plan X any annuity contract distributed to a retiring participant from Plan X must be nontransferable.

Pursuant to section 5.1(e) of Plan X, the entire interest of each participant may commence distribution beginning no later than April 1 of the calendar year following the calendar year in which the participant attains age 70 ½, over the life of the participant or over the lives of the participant and a designated beneficiary.

Pursuant to section 5.1 of Plan X, distributions of a participant's accrued benefit may not be made prior to the time the participant terminates employment, dies or becomes disabled, or attains age 59 ½ . Section 5.1(e) provides that all distributions will be made in accordance with section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirements of section 1.401(a)(9)-2 of the Income Tax Regulations.

Based on the foregoing, you request a ruling that Plan X satisfies the requirements of the Internal Revenue Code as applicable to a 403(b) program and amounts contributed on behalf of employees by Employer A (other than employee after-tax contributions) shall be excluded from the employees' gross income in the year of contribution to the extent such amounts do not exceed the applicable limits described in the Code.

Section 403(b)(7) of the Code provides that amounts paid by an employer to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract if the amounts are to be invested in regulated investment company stock to be held in that custodial account, and under the custodial account no such amounts may be paid or made available to any distributee before the employee attains age 59 ½ , has a severance of employment, becomes disabled (within the meaning of section 72(m)(7), or in the case of contributions made pursuant to a salary reduction agreement, encounters financial hardship.

Section 403(b)(1) of the Code states that amounts contributed by the employer shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415, provided (1) the employee performs services for an employer which is exempt from tax under section 501(a) of the Code as an organization described in section 501(c)(3), or the employee performs services for an educational institution (as defined in section 170(b)(1)(A)(ii) of the Code) which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of the foregoing; (2) the annuity contract is not subject to section 403(a) of the Code; (3) the employee's rights under the contract are nonforfeitable except for failure to pay future premiums; (4) such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), except in the case of a contract purchased by a church; and, (5) in the case of a contract purchased under a plan which provides a salary reduction agreement, the contract meets the requirements of section 401(a)(30).

Section 403(b)(1) of the Code provides further that the employee shall include in his gross income the amounts actually distributed under such contract in the year distributed as provided in section 72 of the Code.

Section 403(b)(10) of the Code requires that arrangements pursuant to section 403(b) of the Code must satisfy requirements similar to the requirements of section 401(a)(9) and similar to the incidental death benefit requirements of section 401(a) with respect to benefits accruing after December 31, 1986, in taxable years ending after such date. In addition, this section requires that, for distributions made after December 31, 1992, the requirements of section 401(a)(31), regarding direct rollovers, are met.

Section 401(a)(9) of the Code, generally, provides that the required beginning date for commencement of benefits is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½, or the calendar year in which the employee retires. Section 401(a)(9) specifies required minimum distribution rules for the payment of benefits from qualified plans.

Section 403(b)(11) of the Code provides, generally, that section 403(b) annuity contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only when the employee attains age 59 ½, has a severance of employment, dies, becomes disabled (within the meaning of section 72(m)(7)), or in the case of hardship. Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

Section 401(g) of the Code requires that the contract be nontransferable.

Section 403(b)(1)(E) of the Code provides that in the case of a contract purchased under a plan which provides a salary reduction agreement, the contract must meet the requirements of section 401(a)(30). Section 401(a)(30) requires a section 403(b) arrangement, which provides for elective deferrals, to limit such deferrals under the arrangement, in combination with any other qualified plans or arrangements of an employer maintaining such plan providing for elective deferrals, to the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year.

Section 402(g)(1)(A) of the Code provides, generally, that the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals exceeds the applicable dollar amount. For 2002, the applicable dollar amount is $11,000. Such amount is increased by an amount equal to $1,000 for each year through 2006.

Section 402(g)(7) of the Code provides that, in the case of a qualified employee of a qualified organization, with respect to employer contributions used to purchase an annuity contract under section 403(b) under a salary reduction agreement, the limitation of section 402(g)(1), as modified by section 402(g)(4), for any taxable year shall be increased by whichever of the following is the least: (i) $3,000, (ii) $15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or (iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary). A "qualified organization" for these purposes means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches and includes any organization described in section 414(e)(3)(B)(ii) and a "qualified employee" means any employee who has completed 15 years of service with the qualified organization.

Section 415(a)(2) of the Code provides, in relevant part, that an annuity contract described in section 403(b) shall not be considered described in section 403(b), unless it satisfies the section 415 limitations. In the case of an annuity contract described in section 403(b), the preceding sentence applies only to the portion of the annuity contract exceeding the section 415(b) or 415(c) limitations.

In this case, you represent that Employer A, an employer described in section 501(c)(3) of the Code which is exempt from tax under section 501(a), has established Plan X as its section 403(b) program for its employees. All contributions and the earnings thereon are fully vested and nonforfeitable at all times. Plan X does not meet the requirements of a section 403(a) annuity contract. The restrictions of transferability are present in Plan X as required by section 401(g) of the Code.

Plan X satisfies the restrictions, under section 403(b)(11) of the Code, that amounts attributable to elective deferrals shall not be distributable earlier than upon the attainment of age 59 ½ , severance of employment, death, disability, or hardship. In addition, Plan X satisfies the section 403(b)(10) requirements and limits contributions in accordance with section 415 of the Code.

Accordingly, we conclude that Plan X satisfies the requirements of the Internal Revenue Code as applicable to a 403(b) program and amounts contributed on behalf of employees by Employer A (other than employee after-tax contributions) shall be excluded from the employees' gross income in the year of contribution to the extent such amounts do not exceed the applicable limits described in the Code.

This ruling is contingent upon the adoption of the amendments to Plan X, as stipulated in your correspondence dated April 17, 2001, January 4, 2002, April 19, 2002, June 6, 2002, June 17, 2002, and July 10, 2002.

This ruling does not address any provisions that may violate the nondiscrimination requirements of section 403(b)(12) and 401(m) of the Code. This ruling does not extend to any operational violations of section 403(b) of the Code by Plan X, now or in the future.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited by others as precedent.

Pursuant to a power of attorney on file in this office, the original of this letter is being sent to your authorized representative.

Any questions concerning this ruling should be addressed to ********** (ID **-********) at (***) ***-**** (not a toll free number).

Sincerely yours,

/s/ Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government Entities Division

Enclosures:
Notice 437
Deleted copy of ruling letter

CC: